

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **VICE CHAIRMAN AL BISHOP**, on March 10, 1999 at 9:05 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: Sen. Lorents Grosfield, Chairman (R)

Members Absent: None.

Staff Present: Jodi Pauley, Committee Secretary
Valencia Lane, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 27, 3/5/1999; HB 149,
3/5/1999; HB 197, 3/5/1999; HB
371, 3/5/1999
Executive Action: None

HEARING ON HB 27

Sponsor: REP. MARK NOENNIG, HD 9, Billings

Proponents: None

Opponents: None

Opening Statement by Sponsor:

REP. MARK NOENNIG, HD 9, Billings, said this bill will revise and clarify unlawful detainer actions. He said unlawful detainer actions were historically the means for eviction for all types of tenants for their failure to pay rent or some other breach of contract. However, when the residential landlord and tenant act was passed, unlawful detainer didn't apply to residences anymore, it only applied to commercial and agriculture leases. He said the current law is very confusing and hard to follow. He read line 18, page 1. He also discussed section 2 of the bill, page 1. He also discussed section 3 and section 4 of the bill, page 2. He said the days are really confusing and this bill simplifies that. This bill says that the defendant has to answer the complaint within 10 days after it is served. This is fair to both the tenant and the landlord.

Proponents' Testimony: None

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. SUE BARTLETT referred to the first section of the bill line 12-14. She asked if it be clear what the other case references mean and are there time lines with other sections of the law.

REP. NOENNIG said yes, unlawful detainer is an unusual procedure and this is why it refers to other cases.

Closing by Sponsor:

REP. NOENNIG closed on HB 27.

{Tape : 1; Side : A; Approx. Time Counter : 9:10 a.m.}

HEARING ON HB 149

Sponsor: **REP. BOB DAVIES, HD 27, Bozeman**

Proponents:

Gary Marbut, MT Shooting Sports Assoc.

Mark Ahner, Self

Darrel Bakken, Self

Dan Hawkins, Self

Brian Crandell, Self

Opponents:

Dal Smilie, Department of Administration
Bud Clinch, Department of Natural Resources
Tim Reardon, Department of Transportation
Don MacIntyre, Self
Mary Coster, Interdepartmental Coordinating Committee For Women
Bob Lane, Department of Fish, Wildlife and Parks
Judy Browning, Governor's Office
Al Smith, MT Trial Lawyers Assoc.
LeRoy Schramm, Montana University System

Opening Statement by Sponsor:

REP. BOB DAVIES, HD 27, Bozeman, read the title of the bill. He said this bill does not provide any special rights or privileges for state employees. It simply restores the same right that a private citizen has under the law. He said about a year ago the administration put forth regulations that prohibited state employees from carrying any firearms on the job. He said some problems have arisen from this law, especially with state foresters. He passed out an amendment **EXHIBIT(jus54a01)** and explained them. He said there has been no problems since this administrative rule was passed a year ago. However, if state employees are prohibited from carrying a weapon in their vehicle they could be targeted by criminal groups, etc. He said when firearms are used improperly there is usually a discharge of that firearm. However, studies show that one and half to two million uses of firearms are used to prevent crime and violence. He said often times when a firearm is used defensively there is no discharge. Liability is a consideration and they have addressed that in section 3 of the bill. However, they did not get a two-third vote in the House so this section drops off.

{Tape : 1; Side : A; Approx. Time Counter : 9:20 a.m.}

Proponents' Testimony:

Gary Marbut, MT Shooting Sports Assoc., said the right to keep and bear arms is stated in our Montana Constitution and has always been a fundamental right in Montana. He gave an example of a rancher in Havre who raises elk. He had to comply with many requirements that the Department of Fish and Game had set out as rules. After complying with these rules the Fish and Game said he could only shoot elk with shot guns. He asked the department where they got their authority to do this. In statute the Legislature says the Department can regulate safety of game farms and they felt this was a safety issue. The Department of Fish and Game does not have the right to infringe on the Constitution. And

this is happening on other game farms and this should be left up to the Legislature and not state agencies. He said in the Department of Commerce there is a board for licensing private security patrol and private investigators. The law says they can issue an armed license or an unarmed license. The board has determined that if a person applies for an armed permit they can turn them down and strip them of their Constitutional right. The problem arises though that many of these people also have concealed weapon permits and if they are caught with a weapon they can have their license taken away. State employees cannot have any firearms when they are at work and this policy was adopted with no public comment. This produces a large amount of liability for the state if people cannot defend themselves. The Department of Administration must be able to provide some sort of protection for their employees. It should be only the Legislature that make these Constitutional changes and not bureaucrats who work for the State of Montana. There are some agencies that have to regulate firearms and they will be excluded by this bill.

{Tape : 1; Side : A; Approx. Time Counter : 9:28 a.m.}

Mark Ahner, Self, passed out a policy that was adopted by the Department of Administration. **EXHIBIT(jus54a02)** He said this policy could have serious consequences to state employees, subjects the state to liability problems, it is contrary to the U.S. and Montana Constitution, and it infringes upon the legislators right to make decisions. He said when this policy first came out it said "weapons" which might be interpreted to include, axes, shovels, chainsaws, etc. They finally got the policy changed from weapons to firearms and it was adopted January 1998. He said in his 26 years that he has worked for the Department of Natural Resources he was not aware of any incidents that had ever taken place that dealt with the abuse or misuse of a firearm. This policy also includes contractors which might include loggers, surveyors, etc. He said he would not like to tell a surveyor that he can't carry a weapon when he is working in grizzly bear country. Insurance rates have not gone down because of this policy. He said the people that wrote this policy were more than likely coat and tie people who work in an office situation and don't work out in the field. He said some of their employees have been mauled by bears. Pepper spray is not an effective tool when dealing with bears and these employees need firearm protection. He gave several examples of these attacks by bears and mountain lions. These people are trying to do a job out in the field and can't because they are trying to defend themselves with no weapons. This policy is unconstitutional, it is counter-productive relative to a safe and healthy work environment, it subjects the state to unnecessary liability claims, and limits the legislative ability to decide if such

things are Constitutional or not. The Governor has already been quoted that if this bill reaches his desk it will be vetoed. But this bill will restore freedom to our citizens.

{Tape : 1; Side : A; Approx. Time Counter : 9:42 a.m.}

Darrel Bakken, Self, turned in a copy of his testimony.

EXHIBIT(jus54a03) EXHIBIT(jus54a04)

Dan Hawkins, Self, said his work requires travel around the state and generally alone at night. He said he would often take a hand gun for personal safety just as he does in his personal life. This has put state employees in their own class in which they can't defend themselves.

Brian Crandell, Self, said his right to defend himself is clearly stated in the Constitution. He said as a state employee he is denied his right to defend himself and they have become second class citizens.

{Tape : 1; Side : B; Approx. Time Counter : 9:50 a.m.}

Opponents' Testimony:

Dal Smilie, Department of Administration, turned in testimony in opposition of **HB 149. EXHIBIT(jus54a05)**

Bud Clinch, Department of Natural Resources, said he has been involved in the wood products industry and has been involved in many shooting sports activities and he is one of the guys who wears a coat and tie, but is not ignorant about field situations. He referred to a letter that he sent to D.J. Bakken.

EXHIBIT(jus54a06) He said this bill pertains to all state employees. DNRC employs 503 full time employees and they work in the field extensively. He said they interact daily in their forestry section with loggers, land owners and wood product purchasers. They also have their fire programs with 120 full time employees. However, this changes during fire season. He said during the 1994 fire season they employed over 1400 employees. And these people could all pack firearms if this bill is passed. He said they had a fire by Plains and they had a fire crew from Alabama and an all black crew from southern California. He said on the second day of the fire they had to use law enforcement to separate those crews when they got in a physical confrontation on the fire line. He said later at the fire camp they had to be physically separated and the California group had to be sent home. He said he could only imagine if one or more of them had firearms. He handed out a firearms policy implementation

guideline. **EXHIBIT(jus54a07)** He also handed out a newspaper article from the Great Falls Tribune. **EXHIBIT(jus54a08)**

{Tape : 1; Side : B; Approx. Time Counter : 10:05 a.m.}

Tim Reardon, Department of Transportation, said it is not good policy for their employees to show up at a home packing a firearm. This is an employer rights bill and elevating it to a Constitutional issue is inappropriate. He said over half of their people work in the field and the thought of them carrying a firearm is a bad plan. He said this is not a liability issue, but a concern that if an employee intentionally or unintentionally fired at another employee then there could be a liability issue.

Don MacIntyre, Self, rose in opposition of **HB 149**.
EXHIBIT(jus54a09)

{Tape : 1; Side : B; Approx. Time Counter : 10:15 a.m.}

Mary Coster, Interdepartmental Coordinating Committee For Women, rose in opposition of **HB 149**. **EXHIBIT(jus54a10)**

Bob Lane, Department of Fish, Wildlife and Parks, turned in testimony in opposition of **HB 149**. **EXHIBIT(jus54a11)**

Judy Browning, Governor's Office, said a majority of employers do restrict the use of weapons and firearms on the job. She said the state has looked at this policy for over a year. They fine tuned it and sent it out to all of the directors of the departments. There may be other changes in the future with this policy. Managers in state government wanted one unified policy to protect employees and liability. The Governor did not say he would veto this bill, but he does not like the bill.

Al Smith, MT Trial Lawyers Assoc., said their concern is on page 2, starting on line 4 concerning Constitutional rights. There has been no problems in the past and immunity is not needed. He said if lines 4-8 and 13-16 were deleted it wouldn't change the bill at all.

LeRoy Schramm, Montana University System, said if they would adopt the amendment (**EXHIBIT 1**) they would have no problem with the bill. He turned in a memo from the University System.
EXHIBIT(jus54a12)

{Tape : 1; Side : B; Approx. Time Counter : 10:24 a.m.}

Questions from Committee Members and Responses:

SEN. STEVE DOHERTY asked if he as a private employer has the Constitutional right to limit the ability of any employees to keep and bear arms. **REP. DAVIES** said perhaps on private property they do have the right to limit this ability, but with state government it is public property.

SEN. DOHERTY asked what if his employer leaves the office to run errands, can he carry a weapon? **REP. DAVIES** said he didn't think his Constitutional right could be infringed upon in this instance.

SEN. DOHERTY said he is paying them a salary and they are under his supervision and is their right to keep and bear arms more important. **REP. DAVIES** said yes.

SEN. REINY JABS asked if every individual without training can conduct themselves appropriately. **REP. DAVIES** said when most people carry a firearm they use it or don't use it in a responsible manner.

SEN. RIC HOLDEN said the language of the Constitution is quite clear that the right of the people to keep and bear arms shall not be infringed. He said there are court cases that have pre-empted the U.S. and Montana Constitution and what court case are those. **Judy Browning** said the court cases don't pre-empt the Constitution they interpret it. U.S. vs. Miller is a 1939 case and it says that if you are passing a law that interferes with the preservation or efficiency of a well regulated militia the second amendment applies. Otherwise if a state has a regulation or a restriction that somehow restricts the use or carrying of weapons it does not violate the second amendment. She said in airports they can restrict firearms and employers also do restrict.

SEN. HOLDEN asked if the administration is using this 1939 court ruling as the hinge pin of their administrative rule. **Judy Browning** said that is the most significant case interpreting the right to bear arms in the second amendment. **Gary Marbut** said it is true that there is not a lot of case law on the second amendment. He explained the Miller case. He said there are some Constitutional rights that can be restricted by an employer. The State of Montana is the employer of these people that come under this and the Legislature can decide to what extent these people should have their Constitutional rights infringed.

SEN. HOLDEN asked what about the farmers and ranchers carrying weapons in their day to day activities. **Judy Browning** said the

executive branch of State Government would have no authority restricting farmers right to carry arms on their private property.

SEN. HOLDEN said this is very selective. They have drawn their conclusions from the Miller case and what other employers have done with their employees and the agriculture community is not even in the equation. Where do they start to erode the rights under the Constitution in this area of gun control. **Judy Browning** said the Miller case simply says how the 2nd amendment of the U.S. Constitution should be interpreted. Employers do protect employees, they regulate their behavior, and have performance standards to operate in safe manners.

SEN. HOLDEN asked if employees were out shooting people before this policy was established. **Judy Browning** said they had a couple of incidents involving weapons in state vehicles. They want to have a consistent policy rather than a variety of policies.

SEN. DUANE GRIMES said Montana is different from other states in restricting firearms from buildings, etc. He asked what do other states do? **Dal Smilie** said he didn't know for sure. But insurance companies have been amazed at the openness that they have. **Brett Dahl, Department of Administration**, said there are four other states in the Rocky Mountain region that restrict employees from carrying weapons in state buildings. And Colorado and Utah prohibit their employees from carrying a firearm in state vehicles.

{Tape : 2; Side : A; Approx. Time Counter : 10:40 a.m.}

SEN. GRIMES said there are real estate appraisers that choose not to go on property to find out what the value of a home is because the owner dislikes government workers and could be a threat or dangerous. He said he is worried that if those employees are carrying a firearm they might go on that property and there could be a confrontation and a black eye for state government. **Gary Marbut** said the foundation that the opponents are making is that state employees are irresponsible people. He said he has great faith in ordinary citizens and the state hires some good people. There has been no problems with employees using firearms before this policy was adopted. And this bill won't create a large number of people misusing firearms.

SEN. MIKE HALLIGAN said state employees are good people, but sometimes the public perception is not shared. He said if a social worker walked into somebody's home with a firearm strapped to his belt that would not be a very good perception of government. Government is powerful anyway, and now they are

giving their employees guns to intimidate the public even further. **Gary Marbut** said they want public employees to be able to provide for their own personal protection the same as anyone else. He said social workers didn't walk into someone's home a year ago with a 44 Magnum strapped to their hip before this policy was passed. And they are not going to do this once this bill is passed.

SEN. HALLIGAN said he has carried bills before to arm motor carrier service people and the trucking industry has opposed it and have said it is intimidating to have someone at the scales that has a gun. **Gary Marbut** said they have exempted the uniform employees from the Department of Transportation in this bill. He said the carrying of firearms is not socially accepted in public places and he doesn't believe that state employees will run around with their guns.

SEN. HALLIGAN asked if they should have the immunity sections in this bill. **REP. DAVIES** said he has no problem with them and they could be struck.

{Tape : 2; Side : A; Approx. Time Counter : 10:50 a.m.}

SEN. DOHERTY referred to the game farm that was restricted from using high powered weapons. Shooting animals in an enclosure is not hunting, it is barbaric. He said if the Fish and Game doesn't consider the safety of a neighboring subdivision and somebody shoots a kid in that subdivision would the state have any liability. **Brett Dahl** said if Fish and Game had some regulatory responsibility on where the game farm was located then potentially they would be liable.

Closing by Sponsor:

REP. DAVIES said the game farm operator did get an exemption during hunting season. Statistically, guns prevent violence and less crimes than they cause. He said in the one year that this administrative policy has been in effect they have had more incidents where a gun could have averted a disaster. The gun does not cause a problem it is the people misusing them. He said they want to give state employees their guns back. He said if he is in bear county he would like to have both the pepper spray and the gun. He said they had a constant law before this policy was adopted. They didn't have a problem before, but they do now. He said he wouldn't object to state employees having to go through training.

{Tape : 2; Side : A; Approx. Time Counter : 11:00 a.m.}

HEARING ON HB 371

Sponsor: REP. JOHN COBB, HD 50, Augusta

Proponents: None

Opponents: None

Opening Statement by Sponsor:

REP. JOHN COBB, HD 50, Augusta, read the title of the bill. He said if a person has to immediately report an accident there has to be at least \$500 sustained and if it is \$1000 or more then there must be a written report. The last time the old amounts were changed was 1978 and this bill keeps up with inflation. He said the effective date is January 2000 so it starts at the beginning of a fiscal year. He passed out a state statistical sheet. **EXHIBIT(jus54a13)**

Proponents' Testimony: None

Opponents' Testimony: None

Questions from Committee Members and Responses: None

Closing by Sponsor:

REP. COBB closed on HB 371.

HEARING ON HB 197

Sponsor: REP. JOHN COBB, HD 50, Augusta

Proponents: None

Opponents: None

Opening Statement by Sponsor:

REP. JOHN COBB, HD 50, Augusta, read the title of the bill. He said this idea has come from other states. When rules are made it has to address how it will affect small businesses, etc. He said only the sponsor through the leadership or the committee, hearing the bill, can ask for a regulatory note. He said this is a check and balance so that when they pass the bill they know what the rules will be. He said it is restricted enough that it won't be used except on a few big bills every session. He said this will make them write better statutes.

Proponents' Testimony: None

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. HOLDEN said on page 2, line 27 would this make legislation even harder to get passed through the legislative process. He said departments can make up things if they want to kill the bill, etc. **REP. COBB** said only the sponsor or the committee could ask for the rules. He said if departments don't like bills they will oppose it anyway. These rules would have to be done before the bill is passed, rather than making rules afterwards.

SEN. BARTLETT said would bills only have a Fiscal Note and rule making notes or will there be other bills asking for other types of notes. **REP. COBB** said there is also a family impact note that has passed the House.

SEN. BARTLETT said it is hard enough to understand the Fiscal Notes let alone rule making notes. **REP. COBB** said the Fiscal Notes are getting better and rule making notes would help the House do their job more efficiently.

Closing by Sponsor:

REP. COBB closed on **HB 197**.

Discussion:

SEN. CHRIS CHRISTIAENS handed out some information on sweepstakes for **SB 185**. **EXHIBIT(jus54a14)** He said a number of states are taking action regarding mail order sweepstakes and fraud. He said since the hearing on this bill his mail has increased 10 fold on this issue and people have spent \$1000s of dollars on mail order sweepstakes.

ADJOURNMENT

Adjournment: 11:16 A.M.

SEN. LORENTS GROSFIELD, Chairman

JODI PAULEY, Secretary

LG/JP

EXHIBIT (jus54aad)